

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: BAIR HUGGER FORCED AIR
WARMING PRODUCT LIABILITY
LITIGATION

MDL No.: 15-md-02666 (JNE/DTS)

This Document Relates To:

LOUIS E. BELLANDE and BONNIE L.
BELLANDE,

Civil Action No.: 16-cv-02700

Plaintiffs,

**PLAINTIFFS' SUPPLEMENT TO
MOTION FOR SUBSTITUTION OF PARTY**

NOW COMES Plaintiffs, Louis E. Bellande and Bonnie L. Bellande, by and through undersigned counsel and submits this, their Supplement to Motion for Substitution of Party, and would respectively show the Court the following:

SUMMARY

A previous Motion to name Bonnie L. Bellande as a substituted party was filed on September 13, 2018. *See* Dkt. 1505, *In re Bair Hugger Forced Air Warming Devices Products Liability Litigation*. This motion indicated that Ms. Bellande was in the process of being appointed as executor/representative of the Estate of Louis E. Bellande. *Id.* Mr. Bellande's Last Will and Testament had been submitted for probate on June 15, 2018.¹

¹ *See* Exhibit A, Letter Documenting Receipt of Will and Copy of Will, Kane County Probate Court, Case No. 18-WI-000530.

On October 3, 2018, Bonnie L. Bellande was officially appointed Independent Executor of the Estate of Louis E. Bellande in a Letters of Office issued by Judge John A. Noverini of the Circuit Court of the Sixteenth Judicial Circuit in Kane County, Illinois.² Under Illinois law, if a party to an action passes away and the claim is not extinguished upon death, a “personal representative shall be substituted as a party” 735 ILL. COMP. STAT. ANN. 5/2-1008(b)(2). Moreover, “[i]t is well established that the Illinois survival statute allows a decedent’s representative to maintain those common law or statutory actions which had already accrued to the decedent prior to his death.” *Wasleff v. Dever*, 194 Ill. App. 3d 147, 152 (1990); *see also Myers v. Heritage Enterprises, Inc.*, 322 Ill. App. 3d 514, 517 (2002) (independent executor of estate of injured party allowed to continue claim under Illinois Nursing Home Care Act for personal injuries deceased party had suffered). Under Illinois’ Survival Statute, Ms. Bellande is permitted to continue this case as the independent executor of Mr. Bellande’s Estate.

Additionally, Mr. Bellande’s will also allows for Ms. Bellande to continue this claim. Under Illinois law, an “Independent Executor” has core administrative duties along with “powers granted in the will.” 755 ILL. COMP. STAT. ANN. 5/28-8. In the instant matter, Mr. Bellande’s will specifically permits the executor “to compromise, contest, prosecute, or abandon claims in favor of or against [his] estate.” Ex. A, Section V, Pg. 5. This language in Mr. Bellande’s will also gives Ms. Bellande authority to continue with this claim on behalf of the estate.

²See Exhibit B, Letters of Office.

CONCLUSION

In light of the supplemental information provided, counsel for Plaintiffs request that the Motion to Substitute Plaintiff, Dkt. 1505, be granted, and the caption be updated to reflect the proper party name, or as an alternative, grant leave to file an amended complaint to correct the proper party.

Dated: October 17, 2018

KENNEDY HODGES, LLP

By: /s/ David W. Hodges
David W. Hodges
dhodges@kennedyhodges.com
Gabriel A. Assaad
gassaad@kennedyhodges.com
4409 Montrose Blvd. Ste 200
Houston, TX 77006
Telephone: (713) 523-0001
Facsimile: (713) 523-1116

ATTORNEYS FOR PLAINTIFF